SUPERINTENDENT OF LANDS & SURVEYS SAMARAHAN DIVISION v. SURIANTO ABDUL HAMID & ANOR

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
AHMADI ASNAWI JCA
IDRUS HARUN JCA
[CIVIL APPEAL NO: Q-01-429-10-2014]
11 JANUARY 2016

LAND LAW: *Acquisition of land – Compensation – Award – Dispute on calculation of compensation – Determination of market value of lands – Whether to take into consideration market value as at date of publication of notification in s. 47 of Sarawak Land Code (Cap 81) ('Land Code') or date of inquiry under s. 51 – Requirement of s. 60(1) of Land Code – Whether there was delay in holding inquiry – Whether art. 13 of Federal Constitution applicable – Whether s. 60(3) of Land Code could apply retrospectively to assess market value of Native Land Area – Sarawak Interpretation Ordinance 2005 (Cap 61), s. 3(14)*

This appeal was directed against the decision of the High Court in awarding compensation for compulsory acquisition of two parcels of land belonging to the respondents by increasing the awards given by the Superintendent of Lands and Surveys Samarahan Division Sarawak ('the appellant'). On 12 January 1995, the Minister, pursuant to s. 47(1) of the Sarawak Land Code (Cap 81) ('the Land Code'), caused a public notice to be issued that the land situated at Muara Tuang, including both parcels of land ('the subject lands') belonging to the respondents, were likely to be needed for the construction of a road. More than seven years and nine months after the public notice under s. 47 of the Land Code was issued, a declaration under s. 48 of the Land Code that the land was needed for public purpose was made on 24 October 2002. The next statutory step in the acquisition proceedings was the issuance of a notice by the appellant pursuant to s. 49 of the Land Code stating the government's intention to take possession of the subject lands and that claims for compensation could be made accordingly. This notice was issued on 20 April 2007 requiring the respondents to attend an inquiry on 17 May 2007, which was a lapse of 12 years and four months reckoned from the date the notice under s. 47 was issued. However, the respondents did not attend the inquiry. The appellant thereupon in the exercise of the power conferred under s. 51 of the Land Code, made an award of RM7 per square meter for the subject lands with the total compensation of RM112,969 awarded to the first respondent for Lot 381 and RM56,610 awarded to the second respondent for Lot 785. The respondents accepted the compensation under protest and consequently applied to the appellant under s. 56 of the Land Code requiring the matter to be referred for the determination of the High Court. The High Court Judge held that the material date of valuation in determining the market value of the subject lands was the inquiry date of 17 May 2007, not the date the public notice

was issued under s. 47(1) as required under s. 60(1)(a). The High Court accordingly proceeded to deliver the awards of RM37 per square meter with the total compensation amounting to RM565,989 for the acquisition of Lot 381 and RM44 per square meter with total compensation amounting to RM349,008 for the acquisition of Lot 785. Thus, the appellant appealed. The issues that arose, *inter alia*, were (i) whether in view of s. 60(1) (a) of the Land Code, the court should take into consideration the market value of the subject lands at the date of the publication of the notification under s. 47; (ii) whether the court was entitled to use the date of the inquiry conducted under s. 51 as the valuation date of the subject lands; (iii) whether art. 13 of the Federal Constitution was applicable where there was a delay in holding the inquiry under s. 51; and (iv) whether s. 60(3) of the Land Code could apply retrospectively to assess the market value of native area land like the subject lands which came under the s. 47 notification before the said section came into force.

Held (allowing appeal in part)
Per Idris Harun JCA delivering the judgment of the court:

(1) Section 60(1)(a) allows only one interpretation in that the section requires the court, in determining the compensation to be awarded on the subject lands resumed under s. 53, to take into consideration the market value as at the date of the publication of the notification in s. 47. The material evidence manifested clearly that both ss. 47 and 48 were used in publishing the public notification and the posting of the declaration by the Minister respectively. Accordingly, in view of s. 60(1)(a), the earlier date which was 12 January 1995 must be taken as the material date for determining the amount of compensation to be awarded for the subject lands. (paras 13 & 14)

(2) Although ss. 51 and 60 of the Land Code does not prescribe any time period for the inquiry and payment of compensation to the affected landowners, reference must be made to s. 3(14) of the Sarawak Interpretation Ordinance 2005 (Cap 61) ('the Ordinance') which requires any prescribed act or thing 'shall, if no time is prescribed be done with all convenient speed'. There could be no doubt that the inquiry proceedings are to follow without undue delay after the publication of the declaration under s. 48. It was not necessary therefore to read these words into s. 60(1)(a), s. 51 and any other provisions of the Land Code by invoking art. 13 cl. 2 of the Federal Constitution. (para 26)

(3) The decision in *Jais Chee & Ors v. Superintendent of Lands & Surveys Kuching Division, Kuching* has the effect of altering the mandatory requirement of s. 60(1)(a) in cases where there is undue delay in making the award of compensation. It is the court's duty as an interpreter of legislation to construe the provisions in question and to arrive at the

legal meaning primarily intended by Parliament when the law is plain. The section as it stands, is not violative of art. 13 of the Federal Constitution. While this court agreed with *Jais Chee & Ors* that a delay in making the award of compensation might cause the compensation awarded to be inadequate, following the decision in *Ong Gaik Kee*, it was not necessary to go so far as to invoke art. 13 cl. 2 for the purpose of determining the fair market value of the subject lands. The respondents could still be adequately compensated within the existing legal framework provided for in Part IV of the Land Code, not by altering the valuation date which was mandatorily required to be used under s. 60(1)(a), but instead by determining the market value of the subject lands in accordance with the said section and from this base market value, with admissible evidence adduced that injustice and inadequacy of compensation proven, a favourable and upward adjustment should be made to increase the compensation in view of the 12 years lapse between the date of the publication of notice under s. 47 and the date of the inquiry under s. 51. The award would be truly reflective of adequate compensation and at the same time was in compliance with ss. 60(1)(a) and 66 of the Land Code. (paras 28 & 29)

(4) The amendment of s. 60 of the Land Code to which sub-s. (3) was added effective 1 January 1999 entailed significant advantage to landowners whose lands belong to the classification of native land area. Where such lands are compulsorily acquired by the authority, the landowners are the ones who will gain as the effect of the mandatory prohibition would no longer preclude the landowners' valuer from using mixed zone land as comparable which would inevitably result in an enhancement of the market value of the acquired lands thus allowing the authority to award higher amount of compensation to the landowners. While it was clear that the amendment does not apply to previous cases where awards for compensation had already been handed down, applying the liberal and purposive approach in interpreting s. 60(3), such amendment should indeed be construed as to allow the provisions to apply to the instant case and all other land acquisitions where inquiries were yet to be conducted when the amendment came into effect. Considering the fact that the legislative intent of the provisions is to benefit the native landowners whose native lands have been acquired, and that the legislature does not intend an unjust result, it was implied in the amendment that s. 60(3) had retrospective application to pending land acquisition proceedings as at the date of the amendment. Any other interpretation to the contrary would produce unjust consequences to the respondents. The respondents should not suffer from the delay that did not occur through their fault. (paras 41 - 46)

(5) The respondents' valuation report which valued the subject lands as at 12 January 1995 at RM15 per square meter and RM15.50 per square meter for Lots 381 and 785 respectively was accepted. Two additional

elements were given in favour of the respondents (i) the usage of the recommended mixed zone land as comparable so that the respondents could benefit from the amendment to s. 60 and (ii) allowing favourable upward adjustment to the base market value of the subject lands. With these two added features, the compensation to be paid to the respondents was adequate for the compulsory acquisition, and represented the fair market value of the subject lands. As such, the awards made by the judge in respect of the subject lands were set aside and substituted with the following awards of RM433,688 for Lot 381 and RM231,929 for Lot 785. (para 51)

Bahasa Malaysia *Headnotes*

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi yang memberikan award pampasan untuk pengambilan wajib dua bidang tanah milik responden-responden dengan meningkatkan award yang diberikan oleh Pengarah Tanah dan Ukur Samarahan Bahagian Sarawak ('perayu'). Pada 12 Januari 1995, Menteri, menurut s. 47(1) Kanun Tanah Sarawak (Cap 81) ('Kanun Tanah'), mengeluarkan notis awam bahawa tanah yang terletak di Muara Tuang, termasuk kedua-dua bidang tanah ('tanah-tanah') milik responden-responden, diperlukan untuk pembinaan jalan. Lebih dari tujuh tahun dan sembilan bulan selepas notis awam di bawah s. 47 Kanun Tanah dikeluarkan, pengisytiharan di bawah s. 48 Kanun Tanah bahawa tanah-tanah diperlukan untuk perkhidmatan awam dibuat pada 24 Oktober 2002. Langkah statutori berikutnya dalam prosiding pengambilan adalah pengeluaran notis oleh perayu menurut s. 49 Kanun Tanah yang menyatakan niat kerajaan untuk mengambil milikan tanah-tanah dan tuntutan untuk pampasan boleh dibuat dengan sewajarnya. Notis yang dikeluarkan pada 20 April 2007 memerlukan responden-responden untuk menghadiri inkuiri pada 17 Mei 2007, 12 tahun dan empat bulan dari tarikh notis di bawah s. 47 dikeluarkan. Walau bagaimanapun, responden-responden tidak menghadirkan diri pada masa inkuiri dijalankan. Perayu dalam menjalankan kuasa yang diberikan di bawah s. 51 Kanun Tanah, telah memberikan award RM7 untuk satu meter per segi bagi tanah-tanah dengan jumlah pampasan RM112,969 yang diawardkan kepada responden pertama untuk Lot 381 dan RM56,610 yang diawardkan kepada responden kedua untuk Lot 785. Responden- responden menerima pampasan dengan bantahan dan memohon kepada perayu di bawah s. 56 Kanun Tanah supaya perkara tersebut dirujuk bagi penentuan Mahkamah Tinggi. Hakim Mahkamah Tinggi memutuskan bahawa tarikh nilaian dalam menentukan nilai pasaran tanah-tanah adalah tarikh inkuiri 17 Mei 2007, dan bukan tarikh notis awam dikeluarkan di bawah s. 47(1) seperti yang dikehendaki di bawah s. 60(1)(a). Mahkamah Tinggi memberikan award RM37 untuk satu meter per segi dengan jumlah pampasan RM565,989 untuk pengambilan Lot 381 dan RM44 untuk satu meter per segi dengan jumlah pampasan RM349,008 untuk pengambilan Lot 785. Oleh itu, perayu merayu. Isu-isu yang dibangkitkan, antara lain,

adalah (i) sama ada mengambil kira s. 60(1)(a) Kanun Tanah, mahkamah harus mempertimbangkan nilai pasaran tanah-tanah pada tarikh notifikasi di bawah s. 47; (ii) sama ada mahkamah berhak menggunakan tarikh inkuiri yang dikendalikan di bawah s. 51 sebagai tarikh penilaian tanah-tanah; (iii) sama ada per. 13 Perlembagaan Persekutuan diguna pakai di mana terdapat penangguhan dalam menjalankan inkuiri di bawah s. 51; dan (iv) sama ada s. 60(3) Kanun Tanah boleh diguna pakai secara retrospektif untuk menaksir nilai pasaran kawasan tanah asli seperti tanah-tanah yang terangkum di bawah notifikasi s. 47 sebelum seksyen tersebut berkuat kuasa.

Diputuskan (membenarkan sebahagian rayuan)

Oleh Idris Harun HMR menyampaikan penghakiman mahkamah:

(1) Seksyen 60(1)(a) membenarkan hanya satu tafsiran di mana seksyen tersebut memerlukan mahkamah, dalam menentukan award pampasan ke atas tanah-tanah di bawah s. 53, untuk mempertimbangkan nilai pasaran pada tarikh penerbitan notifikasi dalam s. 47. Keterangan material menunjukkan dengan jelas bahawa kedua-dua ss. 47 dan 48 digunakan apabila menyiarkan notis notifikasi awam dan pencatatan serta perisytiharan oleh Menteri. Oleh sebab itu, mengambil kira s. 60(1)(a), tarikh lebih awal iaitu 12 Januari 1995 harus diambil sebagai tarikh material untuk menentukan jumlah pampasan yang diawardkan untuk tanah-tanah.

(2) Walaupun ss. 51 dan 60 Kanun Tanah tidak mengarahkan tempoh masa untuk perlaksanaan inkuiri dan untuk bayaran pampasan kepada pemilik tanah yang terjejas, rujukan harus dibuat kepada s. 3(14) Ordinan Tafsiran Sarawak 2005 (Cap 61) (Ordinan) yang memerlukan apa-apa kelakuan yang ditetapkan 'shall, if no time is prescribed be done with all convenient speed'. Tiada keraguan bahawa prosiding inkuiri harus dilaksanakan tanpa berlengah lebih-lebih lagi selepas penerbitan pengisytiharan s. 48. Oleh itu, adalah tidak perlu untuk membaca kata-kata ini ke dalam s. 60(1)(a), s. 51 dan apa-apa peruntukan lain Kanun Tanah dengan menggunakan per. 13 kl. 2 Perlembagaan Persekutuan.

(3) Keputusan *Jais Chee & Ors v. Superintendent of Lands & Surveys Kuching Division, Kuching* mempunyai kesan mengubah keperluan mandatori s. 60(1)(a) dalam kes-kes yang terdapat kelewatan yang tidak wajar dalam membuat award pampasan. Adalah tanggungjawab mahkamah sebagai pentafsir perundangan untuk mentafsir peruntukan yang dipersoalkan dan untuk mencapai maksud undang-undang yang diniatkan oleh Parlimen apabila undang-undang adalah jelas. Seksyen tersebut tidak mencabuli per. 13 Perlembagaan Persekutuan. Walaupun mahkamah ini bersetuju dengan *Jais Chee & Ors* bahawa kelewatan memberikan award pampasan boleh menyebabkan pampasan yang diawardkan tidak memadai, mengikuti keputusan *Ong Gaik Kee*, adalah tidak perlu untuk menggunakan per. 13 kl. 2 bagi maksud menentukan

nilai pasaran yang berpatutan bagi tanah-tanah. Responden-responden masih boleh diberi pampasan yang mencukupi dalam rangka kerja undang-undang yang disediakan oleh Bahagian IV Kanun Tanah, bukan dengan mengubah tarikh penilaian yang wajib digunakan di bawah s. 60(1)(a), tetapi dengan menentukan nilai pasaran tanah-tanah menurut seksyen tersebut dan daripada nilai pasaran asas, dengan mengemukakan keterangan yang diterima masuk bahawa ketidakadilan dan kekurangan pampasan terbukti, pelasaran yang mengalakkan dibuat untuk meningkatkan jumlah pampasan memandangkan 12 tahun telah berlalu di antara tarikh penerbitan notis di bawah s. 47 dan tarikh inkuiri di bawah s. 51. Award akan benar-benar mencerminkan pampasan yang memadai dan pada masa yang sama mematuhi ss. 60(1)(a) dan 66 Kanun Tanah.

(4) Pindaan pada s. 60 Kanun Tanah di mana sub-s. (3) telah ditambah pada 1 Januari 1999 memberikan kelebihan yang penting kepada pemilik tanah yang tanahnya diklasifikasikan sebagai kawasan tanah adat. Di mana tanah tersebut wajib diperolehi oleh pihak berkuasa, pemilik tanah akan mendapat manfaat kerana kesan daripada larangan mandatori tidak akan menghalang penilai pemilik tanah daripada menggunakan zon tanah berbagai sebagai perbandingan yang akan mengakibatkan satu peningkatan nilai pasaran tanah-tanah yang diambil, dengan itu, membenarkan pihak berkuasa memberikan award pampasan yang lebih tinggi kepada pemilik tanah. Walaupun jelas bahawa pindaan tidak diguna pakai kepada kes-kes sebelum ini di mana award pampasan telah diberikan, menggunakan pendekatan yang liberal dan bertujuan dalam mentafsirkan s. 60(3), pindaan itu harus ditafsirkan sebagai membenarkan peruntukan digunapakai di dalam kes ini dan pengambilan tanah yang lain di mana inkuiri belum lagi dilaksanakan apabila pindaan berkuatkuasa. Mengambil kira fakta bahawa tujuan perundangan peruntukan adalah untuk memberi manfaat kepada pemilik tanah asli yang tanah kawasan asli telah diperolehi, dan bahawa badan perundangan tidak berhasrat untuk memperolehi keputusan tidak adil, ia dimaklumkan dalam pindaan bahawa s. 60(3) mempunyai penggunaan retrospektif untuk prosiding pengambilan tanah yang tergantung semasa tarikh pindaan. Tafsiran lain yang berlawanan akan menghasilkan akibat yang tidak adil kepada responden-responden. Responden-responden tidak sepatutnya mengalami penderitaan akibat kelewatan yang berlaku yang jelasnya bukan salah mereka.

(5) Laporan penilaian responden-responden yang menilaikan tanah-tanah pada 12 Januari 1995 pada RM15 satu meter per segi dan RM15.50 satu meter per segi untuk Lot 381 dan 785 masing-masing diterima. Dua elemen tambahan telah diberikan memihak kepada responden-responden iaitu (i) penggunaan zon tanah berbagai sebagai perbandingan

supaya responden-responden boleh mendapat manfaat daripada pindaan s. 60; dan (ii) membenarkan pelarasan meningkat yang menggalakkan kepada nilai pasaran pangkal tanah-tanah. Dengan kedua-dua ciri tambahan ini, pampasan yang perlu dibayar kepada responden-responden adalah memadai untuk pengambilan wajib, dan mewakili nilai pasaran yang adil untuk tanah-tanah. Oleh itu, award-award yang diberikan oleh hakim berkenaan tanah-tanah diketepikan dan digantikan dengan award RM433,699 untuk Lot 381 dan RM231,929 untuk Lot 785.

Case(s) referred to:

B Surinder Singh Kanda v. The Government Of The Federation Of Malaya [1962] 1 LNS 14 PC ***(refd)***

Buan Joong Sdn Bhd v. Superintendent of Lands & Surveys (Kuching Division) [2005] 2 CLJ 910 CA ***(refd)***

Chebaro v. Chebaro [1986] 2 All ER 897 ***(refd)***

Howell v. Falmouth Boat Construction Co Ltd [1951] AC 837 ***(refd)***

Jais Chee & Ors v. Superintendent of Lands & Surveys Kuching Division, Kuching [2014] 3 CLJ 467 CA ***(refd)***

Keck Seng (Malaysia) Bhd v. Pentadbir Tanah, Johor Bahru [1996] 3 CLJ 573 HC ***(refd)***

Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors [2005] 4 CLJ 169 CA ***(refd)***

Lau Kieng Kong & Ors v. Minister for Resource Planning & Anor [1994] 4 CLJ 383 HC ***(refd)***

Lee Chow Meng v. PP [1978] 1 LNS 88 FC ***(refd)***

Lim Guik Hion & Toh Lee Hua v. Superintendent of Lands & Surveys Kuching Division [2010] 1 LNS 751 HC ***(refd)***

Lim Phin Khian v. Kho Su Ming @ Seng Meng [1996] 1 CLJ 529 SC ***(refd)***

Master Ladies Tailors Organisation and Another v. Minister of Labour and National Service [1950] 2 AII ER 525 ***(refd)***

Mohd Noor Othman & Ors v. Hj Mohd Ismail Hj Ibrahim & Ors And Another Case [1988] 2 CLJ 597; [1988] 1 CLJ (Rep) 224 SC ***(refd)***

Ngu Toh Tung & Ors v. Superintendent of Lands & Surveys Kuching Division, Kuching & Anor [2006] 1 CLJ 30 CA ***(refd)***

NKM Holdings Sdn Bhd v. Pan Malaysia Wood Bhd [1986] 1 LNS 79 SC ***(refd)***

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] 1 LNS 14 FC ***(foll)***

Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palm Oil Sdn Bhd [1985] 1 LNS 127 FC ***(refd)***

Re Joseph Suche & Co Ltd (1875) 1 Ch D 48 ***(refd)***

Rohana Lamat v. Superintendent of Lands & Surveys (Unreported) ***(refd)***

Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan [2009] 1 CLJ 13 FC ***(refd)***

Superintendent of Lands & Surveys, Fifth Division, Limbang v. Lim Teck Hoo & Anor [1979] 1 LNS 103 FC ***(refd)***

Tan Kheng Pang v. Superintendent of Lands & Surveys (Unreported) ***(dist)***

Westcourt Corporation Sdn Bhd lwn. Tribunal Tuntutan Pembeli Rumah [2004] 4 CLJ 203 FC ***(refd)***

Legislation referred to:
Federal Constitution, art. 13
Interpretation Ordinance 2005 (Sarawak) (Cap 61), ss. 2(1), 3(14)
Land Acquisition Act 1960, ss. 8, 10
Land Code (Sarawak) (Cap 81), ss. 47(1), 48, 49, 50, 51, 53, 56, 60(1)(a), 61, 62, 63, 64, 65, 66

Matrimonial and Family Proceedings Act 1984 [UK], ss. 12, 13

Other source(s) referred to:
Francis Bennion, *Bennion On Statutory Interpretation,* 5th edn, pp 23, 759-761
GC Thornton, *Legislative Drafting,* 4th edn, pp 112, 168

For the appellant - JC Fong, SLC (Dayang Jamillah Tun Salahuddin, SC with him); State AG's Chambers
For the respondents - Adrian L Chew (Chan Yin Xi with him); M/s Battenberg & Talma

Reported by Suhainah Wahiduddin

JUDGMENT

Idrus Harun JCA:

Introduction

[1] This appeal is directed against the decision of the High Court in which the learned judge awarded compensation for compulsory acquisition of two parcels of land belonging to the respondents by increasing the awards given by the Superintendent of Lands and Surveys Samarahan Division Sarawak (the appellant).

[2] The first parcel of land, comprising an area of 15,297 square meters, belongs to the first respondent and is described as Muara Tuang Occupation Ticket 3677, Lot 381 Block 1 Samarahan Land District. It is situated at Gunong Tinggi, Entengan. The second respondent is the proprietor of the second parcel of land situated at Sungai Melaban, Kuching, with an area of 7,932 square meters, described as Lot 785 Samarahan Land District.

Summary Of Material Facts

[3] On 12 January 1995 the Minister, pursuant to s. 47(1) of the Sarawak Land Code (Cap 81) (the Land Code), caused a public notice to be issued *vide* the Sarawak Government Gazette Notification No. 89 that the land which is situated at Muara Tuang, Kota Samarahan, including both parcels of land (the subject lands) belonging to the respondents, were likely to be needed for the construction of a road.

[4] Under s. 48 of the Land Code, the Minister may make a declaration subsequently if the land is needed for a public purpose. Thus, in the present case more than seven years and nine months after the public notice was

issued under s. 47, the declaration under s. 48 was made by the Minister on 24 October 2002 to the effect that the subject lands were needed for UiTM extension site.

[5] The next statutory step in the acquisition proceedings which is required to be taken in this case was the issuance of a notice by the appellant pursuant to s. 49 of the Land Code stating the Government's intention to take possession of the subject lands and that claims for compensation could be made to him. The notice should also require all persons interested in the subject lands to appear before the appellant at a time and place specified in such notice. This notice, we find, was only issued on 20 April 2007 requiring the respondents to attend the inquiry on 17 May 2007, which was a lapse of 12 years and four months reckoned from the date the notice under s. 47 was issued.

[6] The inquiry was conducted on the day so fixed pursuant to s. 51 of the Land Code. However the respondents did not attend the inquiry. The appellant thereupon in the exercise of the power conferred under s. 51, made an award of RM7 per square meter for the subject lands with the total compensation of RM112,969 awarded to the first respondent for Lot 381 and RM56,610 awarded to the second respondent for Lot 785. The appellant in due course took possession of the subject lands pursuant to s. 53 on 7 February 2008.

[7] Both respondents accepted the compensation under protest and consequently applied to the appellant under s. 56 of the Land Code requiring the matter to be referred for the determination of the High Court.

High Court's Decision

[8] The respondents each filed a separate land reference to the High Court. However, upon application, the High Court ordered the two cases to be heard together.

[9] In a nutshell, the issue for determination before the High Court was whether the relevant date of valuation in determining the market value of the subject lands was the date of the publication of the notice pursuant to s. 47 which was 12 January 1995 or the date of the inquiry conducted and the award delivered pursuant to s. 51 which was 17 May 2007. The learned judge held that the material date of valuation in determining the market value of the subject lands was the inquiry date of 17 May 2007, not the date the public notice was issued under s. 47(1) which was 12 January 1995 as required under s. 60(1)(a). The High Court accordingly proceeded to deliver the awards of RM37 per square meter with the total compensation amounting to RM565,989 for the acquisition of Lot 381 and RM44 per square meter with the total compensation amounting to RM349.008 for the acquisition of Lot 785.

[10] The appellant appealed to this court.

The Appeal

[11] The appeal brings into focus the contentions that have been pressed on us by the appellant which are confined exclusively to four main points for our determination. These are:

(a) whether in view of section 60(1)(a) of the Land Code which expressly decrees that in determining the amount of compensation to be awarded for the land resumed under Part IV, the court shall take into consideration the market value at the date of the publication of the notification under section 47, the court is entitled to use the date of the inquiry conducted under section 51 as the valuation date for the subject lands (grounds 1, 3 and 5 of the Memorandum of Appeal);

(b) whether Article 13 of the Federal Constitution is applicable in the circumstances of the case, where there was a delay in holding the inquiry under section 51 and alternatively whether such delay had caused or resulted in injustice and if so, how could such injustice be addressed (ground 4 of the Memorandum of Appeal);

(c) whether section 60(3) of the Land Code could apply retrospectively to assess the market value of Native Area Land like the subject lands which came under section 47 notification before the said section came into force (grounds 2, 6 and 7 of the Memorandum of Appeal); and

(d) whether the decision of the Court of Appeal in *Jais bin Chee & Ors v. Superintendent Of Lands & Surveys Kuching Division, Kuching* [2014] 3 CLJ 467 which is inconsistent with several decisions of the appellate courts in Malaysia, should be reviewed and reconsidered (ground 8 of the Memorandum of Appeal).

Our Analysis And Decision

[12] We propose to deal with the four points together as it is interrelated. We would start off by reproducing below s. 60(1)(a) for easy reference:

> Matters to be considered in determining compensation
>
> 60(1). In determining the amount of compensation to be awarded for land resumed under this Part, the Court **shall** take into consideration the following matters **and no others**:
>
> a. **the market value at the date of the publication of the notification under section 47** or, if no such notification has been published, the market value at the date of the posting of the declaration under section 48;
>
> (emphasis added)

[13] The material evidence before us manifests clearly that both ss. 47 and 48 were used in publishing the public notification and the posting of the declaration by the Minister respectively. Accordingly, in view of s. 60(1)(a), the earlier date which was 12 January 1995 must be taken as the material

A date for determining the amount of compensation to be awarded for the subject lands (see the Federal Court's decision in *Superintendent of Lands & Surveys, Fifth Division, Limbang v. Lim Teck Hoo & Anor* [1979] 1 LNS 103; [1980] 1 MLJ 58). Therefore, the argument strongly pressed by the learned State Legal Counsel and we think because s. 60(1) is plain in its terms, he B is right on this point, that the correct date for determining the market value of the subject lands is 12 January 1995. Therefore no other dates could be used as it would be contrary to s. 60(1)(a).

Submitting further, the learned State Counsel emphasises that any award, whether by the Superintendent or the court must also comply with s. 66 C wherein it is stipulated that the amount awarded under s. 60(1)(a) must be specified. Section 66 reads:

> Award to be in writing
>
> 66. Every award made under this Part shall specify the amount awarded under section 60(1)(a), the amount, if any, deducted under paragraph (b), D and the amounts, if any, respectively awarded under paragraphs (c), (d), (e) and (f) of the same sub-section, together with the grounds of awarding or deducting the said amounts.

[14] Viewed objectively, we need only say on this aspect that the plain words of s. 60(1)(a) allows only one interpretation in that the section requires E the court, in determining the compensation to be awarded on the subject lands resumed under s. 53, to take into consideration the market value as at the date of the publication of the notification in s. 47. Such interpretation is clearly supported by the Court of Appeal's decision in the case of *Buan Joong Sdn. Bhd. v Superintendent of Lands & Surveys (Kuching Division)* [2005] 2 CLJ F 910 wherein it was held that the date of valuation of the acquired land ought to be the date of the public notification issued under s. 47 and the date of the declaration made under s. 48 could not be taken as the material date of valuation as the plain words of s. 60(1) did not permit such an interpretation. Such an interpretation has also earlier on found favour with the Federal G Court case of *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14; [1983] 2 MLJ 35 which held that the market value of the acquired land had to be determined as the value prevailing on the date of the declaration under s. 8 of the Land Acquisition Act 1960 (Act 486).

H **[15]** We would like to emphasise that there is, in this regard, no provision in the Land Code which stipulates the date of inquiry to be the valuation date. Section 60(1) which shows clarity of legislative intention is expressed in a very strong mandatory tone as evident by the use of the word 'shall' followed in the same breath with a strict direction "and no others" which I plainly prohibit the court from considering any market value that does not come within the two limbs of s. 60(1)(a) or other than the value as it stood at the time the notification was published in s. 47. There is not the slightest room for doubt that any other interpretation of s. 60(1) will result, not only

in a non-compliance with the mandatory requirement of the section but also will give rise to a situation that entails a further violation of s. 66. This is because, s. 66, as earlier stated requires every award to specify the amount awarded under s. 60(1)(a) only indicating that any other amount awarded which is not in accordance with s. 60(1)(a) would not be an award that could be specified under s. 66.

[16] The power conferred on the court in considering adequate compensation to be awarded is confined to and limited by Part IV and more specifically ss. 60 to 66. In the present appeal, the provisions in Part IV and in particular ss. 60 and 66 ought not to be construed as to allow the value of the subject lands to be on the date the inquiry is conducted or any date other than the date of the publication of the s. 47 notice to be taken into consideration as that would be contrary to the legislative intent of the Land Code. Our duty would be to expound the language of s. 60(1)(a) with the settled rules of construction (*NKM Holdings Sdn. Bhd. v. Pan Malaysia Wood Bhd.* [1986] 1 LNS 79; [1987] 1 MLJ 39). We keep in mind that it is a cardinal principle of statutory construction that we must give effect to the legal meaning of a statute or any of its relevant provisions (*Bennion On Statutory Interpretation,* Francis Bennion, 5th edn, at p. 23). The provisions are expressed in a clear language and it is trite law that where the words of a statute are clear there is no room for the court to go beyond the expressed language of the statute (*Mohd. Noor Othman & Ors v. Hj. Mohd Ismail Hj. Ibrahim & Ors & Another Case* [1988] 2 CLJ 597; [1988] 1 CLJ (Rep) 224). It would moreover be a salutary reminder to state that in construing a statute, the duty of the court shall be to interpret it according to, and in order to ascertain the true intent of the legislature, what such legislation seeks to accomplish. That being the case, to award the market value for the subject lands otherwise than at the date of the publication of the notification in s. 47, would be contrary to the provisions of ss. 60(1)(a) and 66 of the Land Code (see *Keck Seng (Malaysia) Bhd v. Pentadbir Tanah, Johor Bahru* [1996] 3 CLJ 573).

[17] In these acquisition proceedings, an inquiry under s. 51 was indeed conducted but evidently the authority failed to do so expeditiously allowing indisputably a long period of close to 13 years to lapse between the date of the publication of the notice under s. 47 and the date of the said inquiry. This unreasonably long delay has driven learned counsel for the respondents to submit that the material date of valuation for the purpose of determining adequate compensation for the subject lands is 17 May 2007 which was the date the inquiry was conducted. Alternatively, it is submitted that if the valuation date is based on 12 January 1995 such valuation must be adjusted to factor in time value of money to bring it to a market value at the time of the inquiry.

[18] From the previous authorities cited before us, we can discern two different approaches adopted in dealing with land acquisition cases where there is a long delay in making the award of compensation in respect of the acquired land. The first approach involves a challenge on the acquisition itself where the land owner would seek by way of a judicial review application to have the acquisition of the land quashed. As regards the second approach, the landowner, proceeding from a different platform of claim would seek an award of compensation based on the current market value of the acquired land by departing from the date of valuation which the court is required by law to apply.

[19] The judicial review approach has found favour with several cases. In this regard, we are mindful that any unreasonable long delay, to adopt the views of Seah FCJ in *Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palm Oil Sdn. Bhd.* [1985] 1 LNS 127; [1986] 1 MLJ 39 in holding an inquiry to make an award can, in certain circumstances, cause grave or serious injustice to the landowner when land value and prices as well as costs are rising rapidly resulting in an award based on out of date prices or value which may not truly reflect adequate compensation. When the law pegs the market value of the subject lands to the date of the declaration under s. 8 of the Land Acquisition Act 1960 (s. 47 notification under the Land Code), a long delay in delivering the award of compensation has the effect of freezing the valuation of the land intended to be resumed by the Government at that date and that the word compensation would be a mockery if what was paid was something that did not compensate. Parliament must have intended the inquiry and award to be made within a reasonable time. In others, such unexplained and unreasonable long delay may amount to an abuse of statutory power. In such cases, the court may, in a proper case and where the land proprietor can prove that he has suffered grave injustice as a result of the unreasonable long delay, declare that the public authority should be held to be disabled from going on with the compulsory acquisition of the land or to have abandoned the acquisition of the land. The land owner ought therefore to have moved the court to have the declaration quashed in a judicial review application by way of *certiorari* (*Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee, supra; Ngu Toh Tung & Ors v. Superintendent of Lands & Surveys Kuching Division, Kuching & Anor* [2006] 1 CLJ 30; [2006] 1 MLJ 142 and *Lau Kieng Kong & 11 Ors. v. Minister for Resource Planning & Anor* [1994] 4 CLJ 383).

[20] Based on the above authorities, it would seem clear that in judicial review application to have the acquisition quashed grounded upon unreasonable delay, the onus of proof is imposed on the land owner to prove that the award is inadequate and that such delay has seriously prejudiced or even resulted in grave injustice to the landowner whose land has been compulsorily acquired by the authority. Thus, in *Oriental Rubber & Palm Oil Sdn Bhd supra*, where the delay was almost four years, *Ngu Toh Tung & Ors.*

supra, which involved a delay of 26 years and *Lau Kieng Kong & 11 Ors supra,* where the authority took 3 1/2 years in making the award and the increase in the market value of the acquired land was not substantial enough, the courts refused to quash the acquisition by way of the application for *certiorari* as the respective landowners failed to prove that they had suffered grave injustice as a result of the unreasonable delay.

[21] However, in *Ong Gaik Kee, supra*, the issue of unreasonable delay was approached differently wherein Salleh Abas CJ (Malaya) delivering the judgment of the Federal Court emphasised that injustice would be caused to the landowner by the long delay because the market value had to be determined as the value prevailing on the date of the declaration, the effect of the delay was that the landowner had to be awarded on the date of the award the past value as on the date of the declaration without taking into account the increase in the price of the land and the effect of inflation which had occurred in the meantime. Thus, the learned Chief Justice (Malaya) was emphatic when His Lordship stressed that the longer was the delay in making the award, the greater would be the injustice to the landowner. In view of the delay of seven years in holding the inquiry under s. 10 of the Land Acquisition Act 1960, the acquisition proceedings were accordingly quashed with the issue of an order of *certiorari*. It would appear from this decision that unreasonable long delay in making the award of compensation would in itself cause injustice to the landowner.

[22] In the appeal before us the land acquisition proceedings herein were never nullified or set aside on account of the unreasonable delay in holding the inquiry and making the award. The respondents, unlike the land proprietors in the cases discussed in the preceding paragraphs, did not apply by way of judicial review to quash the s. 47 notice, they instead proceeded with their case on the second platform of claim or approach urging the court to use the date the inquiry was conducted as the material date of valuation of the subject lands. The s. 47 notice therefore in our view, remains valid and the date thereof would accordingly still form the basis for the assessment of market value of the subject lands in accordance with s. 60(1)(a) of the Land Code.

[23] The learned judge in her decision however, acceding to the argument urged for the respondents and in the wake of the Court of Appeal's decision in *Jais Chee & Ors v. Superintendent of Lands & Surveys Kuching Division, Kuching* [2014] 3 CLJ 467 decided that the date of valuation to determine the market value of the subject lands was the inquiry date of 17 May 2007. We would say in this regard that this decision is a clear departure from the mandatory provisions under s. 60(1)(a) which require the court to apply the date the notice under s. 47 was published as the material date in determining the market value of the subject lands.

[24] In *Jais Chee & Ors, supra*, there was a lapse of nine years since the posting of the s. 48 declaration before the inquiry under s. 51 was held. Declarations under s. 48 for the acquisition of the subject lands were made on 3 October 1996 but an inquiry under s. 51 was held on 24 November 2005. The respondent's valuer recommended that the date of valuation should be 12 August 2005 which was the date of the valuation report. The respondent in determining the compensation to be awarded relied on the market value of the acquired land as at 12 August 2005. However the appellant, dissatisfied with the compensation, caused a reference to be made to the High Court. This time around, the respondent used 3 October 1996 as the material date of valuation. The High Court refused to disturb the award.

[25] On appeal, the Court of Appeal correctly pointed out that there was no provision in the Land Code providing for the time an inquiry under s. 51 should be conducted and for the compensation to be paid to landowners. The effect of the declaration under s. 48 was simply that the appellant ceased to have any legal beneficial interests in the acquired land. It was held that the request by the appellants that the compensation was to be premised on the value of the subject lands on the date of the inquiry of 24 November 2005 would be consistent with the spirit of art. 13 of the Federal Constitution which required 'adequate compensation' to be paid to the appellants. It further held that s. 60(1)(a) of the Land Code, read with art. 13 demanded that the inquiry pursuant to s. 51 be conducted within a reasonable time frame so that an adequate compensation could be ascertained and that the adequate compensation was to be the amount valued as at 12 August 2005.

[26] In our judgment, s. 60(1)(a) is expressed in peremptory language especially with the use of the words 'shall' and 'and no others' that undoubtedly make it mandatory for the court to comply with it in considering the adequate amount of compensation to be awarded. It would also be incumbent upon the valuers for both the appellant and respondents to prepare valuation reports in compliance with s. 60(1)(a). Though the Land Code and in particular ss. 51 and 60 thereof, do not prescribe any time period for the inquiry and payment of compensation to the affected landowners, reference must be made to s. 3(14) of the Sarawak Interpretation Ordinance, 2005 (Cap 61) (the Ordinance) which requires any prescribed act or thing "shall, if no time is prescribed be done with all convenient speed". Obviously, the inquiry which is required to be conducted and the award to be made under s. 51 of the Land Code are two prescribed acts within the contemplation of s. 3(14) of the Ordinance and since s. 51 does not have any time frame within which these prescribed acts are required to be performed, s. 3(14) of the Ordinance therefore applies. A simpler and correct approach would be to construe s. 51 of the Land Code as one with s. 3(14) of the Ordinance which is a referential legislation or a legislation by reference used interchangeably in legislative technique or term (see *Bennion On Statutory*

Interpretation: Francis Bennion, 5th edn, pp. 759-761; GC Thornton: *Legislative Drafting,* 4th edn, p. 168). This is evident by the fact that s. 2(1) of the Ordinance explicitly provides that the Ordinance applies to any written law now or after this in force made by competent authority in Sarawak. In legislative terms, the purpose of having the Ordinance and in particular s. 3(14) is to shorten and simplify written laws by enabling needless repetition to be avoided (see GC Thornton: *Legislative Drafting;* 4th edn, at p. 112). Thus applying s. 3(14) of the Ordinance there can be no doubt that the inquiry proceedings are to follow without undue delay after the publication of the declaration under s. 48 (*Lau Kieng Kong & 11 Ors supra*). With respect, in our opinion it is not necessary therefore to read these words into s. 60(1)(a), s. 51 and any other provisions of the Land Code by invoking art. 13 cl. (2).

[27] Looking at Part IV of the Land Code as a whole, the entire process of land acquisition thereunder are meant to be carried out in a continuous motion between the issuance of the notice under s. 47, declaration under s. 48 and onward to s. 51. No undue delay should be allowed to occur. However, it was allowed to happen in the present case as the relevant authorities completely ignored or did not consider seriously the peremptory language of s. 3(14) of the Ordinance. Thus where an inquiry is not held and payment of compensation is not made 'with all convenient speed', the failure to do so constitutes delay that may consequently cause the award made to be inadequate. However, the Federal Court's landmark pronouncement in *Ong Gaik Kee, supra*, which lays down several propositions of law among others states that it is not necessary to go so far as to invoke art. 13 cl. (2). Clause (2) lays down the constitutional standard of an expropriatory law so that no law shall provide for a compulsory acquisition or use of property without adequate compensation. In that case, and as is with this case, the constitutionality of the Land Acquisition Act 1960 is not the issue as evident from the fact that there is no challenge made by any one against the Act for not providing adequate compensation or in any way being contrary to cl. (2) of art. 13 of the Federal Constitution.

[28] The decision in *Jais Chee, supra*, in our opinion has the effect of altering the mandatory requirement of s. 60(1)(a) in cases where there is undue delay in making the award of compensation. Needless to say that it is the court's duty as an interpreter of legislation, to construe the provisions in question and arrive at the legal meaning primarily intended by Parliament when the law is plain. The section as it stands is not violative of art. 13 of the Federal Constitution. It is not being challenged on the basis that s. 60(1)(a) is unconstitutional or otherwise repugnant to art. 13 cl. (2) (*Ong Gaik Kee*'s case, *supra*; *Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan* [2009] 1 CLJ 13; *Keck Seng (Malaysia) Berhad v. Pentadbir Tanah Johor Bahru, supra*). Neither is there any challenge by the respondents that the Land Code does not provide for adequate compensation

as dictated by art. 13 cl. (2). The law, we apprehend, is that it is only in a situation where the existing law is in conflict with the Constitution that the court is empowered under art. 162 cl. (6) to modify such law to bring it into accord with the provisions of the Constitution. This is clear in the authorities such as *B Surinder Singh Kanda v. The Government Of The Federation Of Malaya* [1962] 1 LNS 14; [1962] 28 MLJ 169 and *Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors* [2005] 4 CLJ 169.

[29] Accordingly, with respect, while we agree with *Jais Chee, supra* that a delay in making the award of compensation might cause the compensation awarded to be inadequate, following the Federal Court's decision in *Ong Gaik Kee, supra*, we do not think that it is necessary to go so far as to invoke cl. (2) of art. 13 for the purpose of determining the fair market value of the subject lands and thus adequate compensation to be awarded to the respondents. We are of the opinion that the respondents can still be adequately compensated within the existing legal framework provided for in Part IV of the Land Code, not by altering the valuation date which is mandatorily required to be used under s. 60(1)(a), but instead by determining the market value of the subject lands in accordance with the said section and from this base market value, with admissible evidence adduced that injustice and inadequacy of compensation proven, a favourable and upward adjustment is made to increase the compensation in view of the 12 years lapse between the date of the publication of notice under s. 47 and the date of the inquiry under s. 51. In this manner the award will be truly reflective of adequate compensation and at the same time in compliance with ss. 60(1)(a) and 66 of the Land Code.

[30] By altering the date of the s. 47 notice to a later date would also in effect tantamount to the learned judge amending it which she is clearly bereft of any power to do so and as such, in law should not be countenanced. Accordingly, we are driven to the inevitable finding that the learned judge had misdirected herself in this fundamental respect when Her Ladyship adopted the date of 17 May 2007 as the valuation date for the purpose of determining the adequate compensation to be awarded. In our judgment and to adopt the words of Justice Linton Albert in *Lim Guik Hion & Toh Lee Hua v. Superintendent of Lands & Surveys Kuching Division* [2010] 1 LNS 751, "the court has no discretion, under whatever guise, and estoppel included to flout the express provisions of a statute and hence full force of s. 60(1)(a) must be brought to bear." In fact, in *Tan Kheng Pang v. Superintendent of Lands & Surveys*, Land Reference No. 15-3-2007-III consolidated with *Tan Kheng Pang v. Superintendent of Lands & Surveys*, Land Reference No. 15-4-2007-I, where there was a lapse of 32 years between the date of the 1947 notice and date of resumption of the acquired land, the High Court held that the relevant date to determine the market value was the date of the s. 47 notice and to make up the loss of 32 years, the High Court accepted the adjustment made by the respondent's valuer when she generously compounded 8% per annum to the value of the land.

[31] It is significant to mention that in the instant appeal, both the respondents' and the appellant's valuers adopt two distinct approaches in preparing their valuation reports. The respondents' valuation report provides two methods of valuation. For the first method, the market value is based on the date of the publication of the s. 47 notice which was 12 January 1995 while the second method the valuer has provided another market value of the subject lands based on the inquiry date of 17 May 2007. The valuation report, as regards the first method of valuation, has also factored in the time value of money for the lapse of 12 years 4 months. Following *Tan Kheng Pang*'s case, *supra*, the respondents' valuer makes a similar adjustment by compounding 8% per annum to the base market value of RM230,000 or RM15 per square meter for Lot 381 and RM123,000 or RM15.50 per square meter for 13 years determined on 12 January 1995 thereby arriving at the sums of RM625,500 or RM40.89 per square meter and RM334,500 or RM42.17 per square meter for Lots 381 and 785 respectively. The rate of 8% per annum is the rate the government's own valuer applied in *Tan Kheng Pang*'s case, *supra* to achieve adequate compensation in light of the long delay in the payment of compensation. As for the second method, based on the inquiry date, the market value recommended by the respondents' valuer for Lot 381 is RM690,000 or RM45 per square meter while the market value for Lot 785 is RM355,000 or RM45 per square meter.

[32] The appellant's valuer on the other hand prepared two valuation reports each for Lot 381 and Lot 785 in 2013 based solely on prevailing market value of landed property as at 12 January 1995 obviously in compliance with the requirement under s. 60(1)(a).

[33] In view of our decision that the material date of valuation is 12 January 1995, the respondents' valuation based on the date of inquiry on 17 May 2007 shall be ignored and can by no means be relied on. Thus for the purpose of considering the adequate compensation, this court will only consider the respondents' valuation as at 12 January 1995 and the appellant's valuation.

[34] The learned judge in considering the appellant's valuation reports found that the reports were wanting in reliability by reasons of the many unsatisfactory features found therein. These unsatisfactory features as found by the learned judge are as follows:

(a) the valuation reports were only prepared in 2013, which was six years after the inquiry was held;

(b) no valuation reports were prepared for the subject lands at the time of the inquiry under s. 51;

(c) on the actual day of the trial, RW1 (the appellant's valuer) made last minute amendments in respect of the land sizes as well as the adjusted values of all six comparable sales in sales analysis adjustment in Appendix D to both reports;

(d) RW1 was unable to give any explanation and justify for these last minute substantial amendments;

(e) RW1 admitted she printed the wrong version of Appendix D; and

(f) RW1 admitted that she should have also amended the Schedule Of Comparable Sales in Appendix B but she did not because she did not realize the typographical errors.

It would seem, according to the learned judge, that RW1 had prepared more than one version for her valuation reports but she never gave any explanation as to why there was more than one version prepared.

[35] Despite selecting six comparable sales, RW1 conceded that she only relied on sale number 4 and sale number 5. She regarded sales number 1, 2 and 3 as irrelevant and therefore did not consider it. The learned judge found that sales numbers 4 and 5 were inaccurate comparisons because both had s. 47 imposed on it indicating that there were in force notices stating that the lands in question were likely to be needed for a public purpose. According to the learned judge, land subject to s. 47 restriction generally would fetch lower price as the restriction would have a negative effect on such land. RW1 during cross-examination admitted to not doing a proper title search or having knowledge of the fact that both comparable lots had s. 47 imposed on it. RW1 moreover did not incorporate the negative factors into her valuation. It would thus be impossible to arrive at a fair and reasonable market value by relying on these two sales.

[36] The learned judge accordingly found that the subsequent revisions and adjustments made by RW1 were arbitrary, unreliable, illogical, unexplained and purely self-serving to support the earlier award made by the appellant on 17 May 2007 which was made without the benefit of any specific valuation report. The learned judge whereupon decided that the valuation reports could not be relied on to assess the fair market value of the subject lands. Following the decision in *Rohana Lamat v. Superintendent of Lands & Surveys*, Samarahan Division, Land Reference No. KCH-15-1-2011, the learned judge held that this inconsistent valuation of the market value of the subject lands and the fact that it was prepared to justify the appellant's award rendered RW1's testimony and her valuation reports bereft of any evidential value.

[37] We accept the learned judge's assessment of the evidence of RW1 and her decision to disregard the comparable sales number 4 and number 5. We think her points are well taken and are supported by the authority. The essential point we would like to reiterate at this juncture and at the risk of repetition, is that Her Ladyship's decision to adopt the valuation based on the inquiry date of 17 May 2007 was in consequence, tantamount to non-compliance with the mandatory requirement imposed on the court under s. 60(1)(a).

[38] In this context, while we are reminded of the necessity to comply with s. 60(1)(a), the argument urged for the appellant is that the court ought to take into account and add the 'time value of money or adequacy factor to the base value of the subject lands'. We shall at this point revert to the appellant's valuation reports. RW1 in her report, while correctly relied on the market value of the subject lands on 12 January 1995 in accordance with s. 60(1)(a), expressed her opinion that the market value growth yearly would not be more than 4%. The rate is based on several factors. Firstly there is only one main road or access by land to Muara Tuang, secondly, there is no direct access to the subject lands because being the second layer from the road, it does not have road frontage, thirdly the property market is a bit slow and lastly the land transactions are not as active as the neighbouring district, which is Kuching. With the appreciation of 4% annually the appellant submits that the respondents would have been fairly and reasonably compensated by allowing such an annual increase to the market value of the subject lands. Notwithstanding the learned judge's rejection of the comparable sales relied on by RW1 in her report, we accept that these factors which RW1 had considered are relevant in assessing the yearly growth of the market value of the subject lands. We also agree with the submission of the learned State Legal Counsel that the court should add the time value of money or adequacy factor to the base value of the subject lands so that the award will reflect the market value of the subject lands. It is to be noted that in this regard, the respondent's valuer has also adopted a similar stance in his valuation report in determining the fair market value of the subject lands.

[39] The respondents' valuer, however, has made adjustment for time value of money for 13 years gap suggesting 8% annual increment based on the High Court's decision in *Tan Kheng Pang, supra.* In that case, it is significant to mention that the learned judge remarked that the government valuer had generously compounded 8% per annum to the value of the land to make up for the loss of 32 years. However the objector's appeal was dismissed as the learned judge held that the objector failed to show that the award was not adequate. The said case in our view can be distinguished from the present land reference as the delay in that case was unusual and very much longer, which in our view could possibly be the reason the government was generous in enhancing the value by 8% per annum. In the case before us, the delay was 12 years and four months. We think that an annual increment of 8% will be a little too high but an increase of 4% will be a wee too low to be added to the value of the land. The appropriate percentage in our view would be an increase of 5%. Quite apart from the reasons that we have discussed earlier, our decision is also premised on the fact that the respondents have benefitted from the amendment of s. 60 when their valuer used mixed zone land as comparable while the subject lands are merely classified a native area land whose value is lower than the comparable lots. We shall deal with this issue in the following paragraphs. This percentage of the annual increment,

in our view, is fair and reasonable and would adequately compensate the respondents to make up for the loss of 12 years and four months. In arriving at this decision, and mindful of the Federal Court's decision in *Ong Gaik Kee*'s case, *supra* we accept that the unreasonable and unexplained long delay in making the awards to the respondents had resulted in the compensation ordered to be paid to the respondents by the appellant to be inadequate and had thus inevitably caused grave injustice to them.

[40] We bear in mind that the learned judge had decided to disregard the two comparable sales relied on by RW1 in her valuation report to which we have alluded and which decision we have no reasons to disagree. In view of this decision, for the purpose of determining the fair market value of the subject lands, the respondents' valuation is to be preferred rather than the appellant's valuation report. However, as we have indicated earlier, only the valuation as at 12 January 1995 shall be accepted as it was determined in accordance with s. 60(1)(a) of the Land Code.

[41] Notwithstanding our decision, we have been reminded by the learned State Legal Counsel that the comparable lots relied on by the respondents' valuer are classified as a mixed zone land whereas the subject lands are classified as a native area land. The appellant on this aspect draws our attention to the amendment of s. 60 of the Land Code to which sub-s. (3) was added effective from 1 September 1999. Subsection (3) in this connection, requires any determination of the amount of compensation to be awarded for native area land resumed under Part IV of the Land Code shall not take into account the fact that such land is native area land. Accordingly, the learned State Legal Counsel submits, as the amendment is not retrospective, it does not apply to the subject lands which were acquired before the said amendment. The respondents' valuer however took into consideration s. 60(3) in his valuation of the subject lands as at 12 January 1995 by using the Mixed Zone Land as comparable. Therefore, for the appellant, it is contended that the respondents' valuation is fundamentally flawed. It is not difficult to apprehend the appellant's objection to the respondents' reliance on s. 60(3) as in general terms the amendment has entailed significant advantage to landowners whose lands belong to the classification of native land area. This is particularly true because where such lands are compulsorily acquired by the authority, the landowners are the ones who will gain as the effect of the mandatory prohibition would no longer preclude the landowners' valuer from using mixed zone land as comparable which will inevitably result in an enhancement of the market value of the acquired lands thus allowing the authority to award higher amount of compensation to the landowners.

[42] The learned State Legal Counsel, we assume, based his submission on the well-established presumption that no statute is to be construed as having a retrospective operation unless such a construction appears very clearly or

by necessary and distinct implication therein (*Master Ladies Tailors Organisation v. Minister of Labour and National Service* [1950] 2 AII ER 525; *Howell v. Falmouth Boat Construction Co Ltd* [1951] AC 837). The underlying reason for this presumption as emphasised by the Federal Court in *Lim Phin Khian v. Kho Su Ming @ Seng Meng* [1996] 1 CLJ 529; [1996] 1 MLJ 1 is attributed to the judicial philosophy that Parliament does not intend an unjust result. Therefore the basis of the rule clearly is no more than simple fairness. Turning to the amendment of the Land Code in the present appeal, we note that the legislature, in incorporating sub-s. 60(3) does not consider whether special savings or transitional provisions are necessary as a consequence of change in the Land Code. The amendment does not contain transitional or savings provisions which may specifically deal with pending acquisition cases or proceedings such as the present land reference as at the date of the amendment. The legislature has left to the court the task, and thus it behoves this court to determine whether, after considering the principle relating to the presumption against retrospectivity of legislation and its exception, the amendment of s. 60 can be construed to be applicable to the subject lands. The law, we apprehend, is that the acquisition proceedings are pending as soon as commenced and until it is concluded (*Lim Phin Khian v. Kho Su Ming, supra*). Herein lies the difficulty. The acquisition proceedings in the present appeal commenced before the amendment in question but were pending when the amendment was enforced on 1 January 1999. The question therefore has arisen in consequence of this development which is whether the amendment can be brought to bear on the subject lands.

[43] The correct approach in dealing with this issue according to the Federal Court in *Lim Phin Khian v. Kho Su Ming, supra* and *Westcourt Corporation Sdn Bhd lwn. Tribunal Tuntutan Pembeli Rumah* [2004] 4 CLJ 203, is to look at the substance and general purpose of the legislation in order to discover its objective, aim or purpose, the mischief it is intended to be addressed, to have regard to the consequences that would ensue from holding a statute to be retrospective or prospective and to avoid any construction that would produce unfair, absurd or horrendous consequences. It would therefore be our duty to examine the amended provisions in question and to ascertain what the legislature has intended. There is no doubt in our mind that s. 60(3) is not merely dealing with a matter of procedure but with rights. It is said that where the amendment merely deals with procedure, such amendment will have retrospective effect. It is perfectly settled, on the other hand, that a statute dealing with rights has effect only for the future (*Lee Chow Meng v. PP* [1978] 1 LNS 88; [1978] 2 MLJ 36). It follows therefore that any statute dealing with substantive rights does not affect existing rights, it must instead preserve such rights (*Re Joseph Suche & Co Ltd* (1875) 1 Ch D 48).

[44] However in the case before us, the amendment does not take away the existing rights of the respondents. The amendment in fact confers better deal to the respondents as the new law has irrefutably allowed better comparable

lots to be considered in determining the amount of compensation to be awarded. The amendment is intended to make significant changes to the law relating to valuation of landed property that has been acquired aimed at benefitting the landowners of native area lands. However unfairness and injustice to the landowners may unavoidably be the consequence where there is a lapse of unusually long period of time before an award of compensation is finally made in pending acquisition proceedings if the landowners are to be deprived of the benefit brought about by the amendment.

[45] Thus while it is quite clear that the amendment does not apply to previous cases where awards for compensation had already been handed down, applying the liberal and purposive approach in interpreting s. 60(3), we are of the view that such amendment should indeed be construed as to allow the provisions to apply to the instant case and all other land acquisitions where inquiries were yet to be conducted when the amendment came into effect on 1 January 1999. Considering the fact that the legislative intent of the provisions is to benefit the native landowners whose native area lands have been acquired, and that the legislature does not intend an unjust result, we are of the considered view that out of necessity, it is implied in the amendment that s. 60(3) has retrospective application to pending land acquisition proceedings as at the date of the amendment. Any other interpretation to the contrary would produce unjust consequences to the respondents. Accordingly, in our judgment, the respondents' valuer was perfectly correct when he used mixed zone land as comparable in determining the fair market value of the subject lands.

[46] Additionally, the respondents in our view should not be deprived of the benefit from the amendment of s. 60(3) lest it would inevitably result in gross injustice to them. Our decision goes upon the basis that where any land has been acquired on 17 May 2007 the proprietor of the land with the status of native area land stands to benefit from s. 60(3) of the Land Code as compared with the respondents who would be deprived of the benefit provided in s. 60(3) if the court were to decide the amendment does not apply to the subject lands even though the inquiry was conducted on the same date. The long delay would render the award of compensation to the respondents to be discriminatory. We think that this should not be allowed to occur and the respondents should not suffer from the delay that did not occur through their fault. To avoid this situation, the valuation of the subject lands should logically be allowed to take into account s. 60(3).

[47] In *Westcourt Corporation Sdn. Bhd. lwn. Tribunal Tuntutan Pembeli Rumah, supra* the Homebuyers Claims Tribunal was constituted on 1 December 2002 with the enactment of the Housing Developers (Control and Licensing) (Amendment) Act 2002. The High Court had endeared to the view that the Tribunal could not have the jurisdiction to hear the homebuyer's claim, since the breaches of the sale and purchase agreement

occurred before 1 December 2002 and since Parliament had not made it clear that the amendment Act would have retrospective effect; and that considering s. 16 AD granting an award to the homebuyer would tantamount to allowing criminal law to operate retrospectively. The issue before the Federal Court was whether the Tribunal had jurisdiction to hear and adjudicate on cases where the sale and purchase agreement was entered into before 1 December 2002 and, if so to what extent. The Federal Court held that the Tribunal had jurisdiction to hear a claim that arose from an agreement that was entered into before 1 December 2002 and s. 16 AD was also applicable to an agreement entered into before that date. The Federal Court in arriving at the above decision agreed with the Court of Appeal's approach in applying the liberal and purposive rule of interpretation and with the following *dictum*:

> It is absurd in our view to say that Parliament proceeded to legislate for the establishment of the Tribunal well aware that it would only begin to serve its purpose a few years later since it would be inconceivable for claims to arise on breaches of sale and purchase agreements entered into prior to the appointed date. Meanwhile the claims of homebuyers based on breaches of sale and purchase agreements entered into prior to the appointed date would continue to languish under the present set up. Surely that must have been the very mischief which Parliament intended to address when it legislated for the establishment of the Tribunal.

[48] The Federal Court in *Lim Phin Kian v. Kho Su Ming, supra* had similarly applied a purposive interpretation of s. 17 of the Courts of Judicature (Amendment) Act 1995 (Act A909) when it held that Parliament intended that so long as there was a judgment, order or decision of the High Court, given on or before 23 June 1994, and an appeal against the same had been brought whether on or before or even after such date, it was the Federal Court and not the Court of Appeal which was invested with the jurisdiction to hear and determine the same. This interpretation should certainly avoid the sort of manifest injustice to litigants in the position of the appellant.

[49] In *Chebaro v. Chebaro* [1986] 2 All ER 897, on 26 February 1986 by a summons, the applicant (the wife) whose husband had been granted a decree of divorce in Lebanon on 16 April 1985 sought leave, pursuant to s. 13 of the Matrimonial and Family Proceedings Act 1984 in England to apply for an order for financial relief under Part III of the Act namely amongst others, an order for periodical payments for herself. Section 12 of the Matrimonial and Family Proceedings Act 1984 was enforced in England on 16 September 1985. Section 12, *inter alia*, allowed either party to the marriage to apply to the court for an order for financial relief where a marriage had been dissolved or annulled by means of judicial or other proceedings in an overseas country. The court accepted the unfair consequences to the husband that might follow, the creation of new rights and obligations and by the imposition on him of potentially severe financial liability which did not exist when his marriage was dissolved. That according to the court, was not to say however that such risks were not contemplated

or even intended by Parliament when introducing new legislation. The court held that those words, in their ordinary and natural meaning, apply initially to all cases in which the divorce, annulment or legal separation had been pronounced in judicial or other proceedings overseas, whatever the date of such proceedings and even if it was before 16 September 1985 and accordingly, the provisions in question were retrospective in their effect.

[50] Likewise in the present case, it must be within the contemplation of the Legislature that there would be pending land acquisition proceedings and there might also be a delay in some cases in awarding compensation that would result in unfair, unjust and horrendous consequences if the amendment is held to be prospective in its effect. Such results or consequences would not have been intended by the legislature when it amended s. 60. Instead this should also be the mischief which the legislature must have sought to address when it passed the amendment, the purpose being to avoid the sort of manifest injustice to litigants in the position of the respondents. Any other interpretation to the contrary would in our judgment frustrate the reforming purpose of the legislature when it amended s. 60. For these reasons, we have very little hesitation in rejecting the appellant's submission on this point as being wholly erroneous.

Conclusion

[51] Premised on the aforesaid reasons, we accept the respondents' valuation report which values the subject lands as at 12 January 1995 at RM230,000 or RM15 per square meter and RM123,000 or RM15.50 per square meter for Lots 381 and 785 respectively. We however reject the recommended quantum for adjustment for time value of money at 8% for 13 years and substitute it with 5% per annum for 13 years. In arriving at this decision, we would like to emphasise that we find it desirable to add two additional elements in favour of the respondents. Firstly we use the recommended mixed zone land as comparable so that the respondents can benefit from the amendment to s. 60, and secondly we allow favourable upward adjustment to the base market value of the subject lands as at 12 January 1995 at the rate of 5% being the time value of money or adequacy factor. In our judgment, with these two added features, we are convinced that the compensation to be paid to the respondents is adequate for the compulsory acquisition, and represents the fair market value, of the subject lands. As such, the awards made by the learned judge in respect of the subject lands are set aside and substituted with the following awards of RM433,688 at RM28.35 per square meter for Lot 381 and RM231,929 at RM29.24 per square meter for Lot 785. There shall be interest at 5% per annum on the sums awarded from the date of the possession of the subject lands until full settlement. We allow this appeal in part to the extent stated above with no order as to costs.